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January 23, 2002

TO INTERESTED PARTIES:

JAMES E. SPEED
Executive Director

ASSESSORS' HANDBOOK SECTION 267
WELFARE, CHURCH, AND RELIGIOUS EXEMPTIONS

Letter To Assessors 2000/073, dated October 31, 2001, distributed a matrix containing proposed changes for an update of Assessors' Handbook Section 267 (AH 267), *Welfare, Church, and Religious Exemptions*. Interested parties were asked to submit proposed revisions to the updated text. Staff has reviewed the comments and proposed revisions received and incorporated those that were deemed appropriate.

Enclosed is a matrix compiled from the comments and suggestions received. This matrix contains all proposed changes, originating from both interested parties and staff, together with staff's position in regard to each proposed change.

On February 8, 2002, staff will hold a meeting with interested parties to discuss proposed changes to AH 267 as identified on the matrix. The purpose of the meeting is to reach agreement on the final language for the handbook update. The meeting is scheduled to start at 9:30 a.m. in Room 122, Board of Equalization, 450 N Street, Sacramento.

After the interested parties meeting the project will proceed as follows:

- Staff will complete an issue paper and other required material for the Property Tax Committee meeting by April 3, 2002.
- The Board's Property Tax Committee is expected to hear discussion of any unresolved issues at its April 17, 2002 meeting.

All documents relating to this project are available on the Board's Web site (www.boe.ca.gov) and can be accessed through Property Tax Committee Work Plans.

If you plan to attend the February 8 meeting, please contact Gordon Ferguson at (916) 322-3815; e-mail at gordon.ferguson@boe.ca.gov. Thank you for your continued interest in this project.

Sincerely,

David J. Gau
Deputy Director
Property Taxes Department

DLG:gf
Enclosure

ASSESSORS' HANDBOOK SECTION 267, WELFARE, CHURCH, AND RELIGIOUS EXEMPTION
Comments on October 31, 2001 Update Language

ITEM NO.	OCTOBER 31 MATRIX REFERENCE	AUGUST 2000 PAGE REFERENCE	SOURCE	COMMENTS/SUGGESTIONS/PROPOSED LANGUAGE	SBE STAFF POSITION
1.	None	Part I, Page 36	SBE Staff	<p>Revise sentence under section titled <i>Statutory Changes Enacted</i>:</p> <p>A <u>2001 statutory subsequent amendment</u> has <u>extended-limited</u> the <u>duration that applicability of this section will be operative through only</u> lien date, January 1, 2002-2012.^{FN} The section is repealed as of the lien date of the following year, absent any action by the Legislature to extend it.</p> <p>^{FN} Stats. 2001, Ch. 533, SB 198.</p>	Change made to reflect an amendment to section 214.02 made by the enactment of SB 198 in October 2001.
2.	None	Part I, Page 36	SBE Staff	<p>Add section before section titled <i>Schools of Less Than Collegiate Grade</i>:</p> <p><u>Property Used for a Park and Leased for 35 Years or More</u></p> <p>In 2001, section 236.5^{FN} was added to the Revenue and Taxation Code to exempt an interest in real property that is leased for a term of 35 years or more by a charitable foundation and used exclusively by the lessee as a public park, if all the following conditions are met:</p> <ul style="list-style-type: none"> • <u>The charitable foundation is exempt from federal income taxation under Internal Revenue Code section 501(c)(3);</u> • <u>The operation of the public park by the lessee is within the tax exempt purposes of the lessee;</u> • <u>The lessee acquired the leasehold in the property by means of a charitable donation; and,</u> • <u>Under the terms of the lease, the lessee foundation will obtain fee ownership on or before the end of the lease term.</u> <p>^{FN} Stats. 2001, Ch. 609, SB 882.</p>	Section of handbook added to reflect information regarding the addition of section 236.5, which was effective as of October 7, 2001.

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3.	No. 6	Part I, Page 65	Sacramento County Assessor (Kelley)	<p>Comment: Add suggested language to the end of second paragraph. We feel this would better reflect the law, and its wording is drawn from Appendix A, page 6, August, 2000 AH 267's summary of <i>St. Germain Foundation v. County of Siskiyou</i>.</p> <p>Revise language: For example, the use of the property by the owner organization solely for a residence for a member of the clergy to provide respite is an exempt purpose where that use is in furtherance of the religious purpose of the organization as set forth in the organization's tenets-, <u>as contrasted with mere considerations of residential convenience which would not be exempt.</u></p>	<p>Not accepted. The quoted phrase is not part of the holding of the case cited, in which the court approved exemption. The phrase is <i>dicta</i>, and is not a standard set forth by the courts for exemption. The standards for exemption cited by the courts are “institutional necessity” and “incidental to and reasonably necessary for accomplishment of exempt purposes.” (citations) Rule 137 makes it clear that those two standards are identical.</p> <p>Further, later court decisions and the express provisions of Rule 137 make it clear that the residential convenience of the occupants is not a factor in granting exemption. It is the use of the property by the owner organization that is the test.</p>
4.	No. 6	Part I, Page 65	Sacramento County Assessor (Kelley)	<p>Comment: Remove item (3) because it is too vague and implies too broad an interpretation of the law.</p> <p>Revise language: Required documentation could include: (1) a copy of the organization's tenets, canons or other written policy confirming that the organization has the established practice or obligation to provide housing to certain employees or volunteers to carry out the exempt purpose of the organization; or (2) a statement explaining how the use of the property for housing and related facilities is a use that is incidental and reasonably necessary for the accomplishment of the exempt purposes of the organization.; or (3) a statement or other information confirming that the property is used for housing, and if other uses are also made of the property, the nature of those uses.</p>	<p>Not accepted. The information requested in Item 3 is necessary so Board staff and the assessors can determine whether the use of the property falls within the scope of Rule 137. The phrase is not vague, and reflects a proper interpretation of the law.</p>

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5.	No. 6	Part I, Page 65	Sacramento County Assessor (Kelley)	<p>Comment: Additional language is necessary to ensure that the assessor is properly notified of all occupants of the property, and all uses and activities which involve the housing. Suggested language was condensed from LTA 2001/51, Property Tax Rule 137, Application of the Welfare Exemption to Property Used for Housing of August 1, 2001.</p> <p>Add paragraph:</p> <p><u>The required documentation should be on the letterhead of the exempt organization and signed by an officer or authorized representative of the organization. It should also include (1) a statement outlining the activities and uses which the housing supports; (2) a calendar of events or listing of activities involving the housing; (3) a statement listing all occupants , their relationship to the organization, and which affirms that the occupants are required to live at the housing in order to carry out the exempt purposes of the organization.</u></p>	Not accepted. The proposed language does not reflect the requirements of existing law as set forth in Rule 137. The information required is specified in the matrix in item no. 6 on page 7. No calendars of events or listing of occupants may be required on a routine basis. If an Assessor has reason to believe that the requirements for exemption are not met for a particular property, additional information may be required to substantiate the claim.
6.	No. 7 Att. A, Footnote 7	Part I, Pages 65-68	Michael Stein	<p>Comment: The language used is ambiguous and could be read to conflict with the statewide annual limit of \$20,000 per claimant and the description in the text it accompanies.</p> <p>Revise footnote:</p> <p>^{FN 7} Additional reporting is required, see Part E of BOE-267-L. Claimants with properties qualifying for exemption under section 214(g)(1)(C) must list all the counties in which such properties are located and the dollar amount of tax exemption, <u>not exceeding in the aggregate the statewide annual cap of \$20,000, to be applied to each property.</u> up to the \$20,000 exemption cap to be applied to each property.</p>	Not accepted. Proposed FN 7 should be deleted since the same information is provided in the second paragraph under number 3 on page 2 of Attachment A.

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7.	No. 7 Att. A, Page 2, 5 th paragraph	Part I, Pages 65-68	Michael Stein	Revise sentence: Specific instructions from the Board will be forthcoming regarding the frequency, specific information <u>required</u> , and format of this listing.	Not accepted. The Board issued CAO No. 2001/013, on November 1, 2001, requesting data to verify and ensure that the cap of \$20,000 of tax has not been exceeded statewide. As, such, staff is proposing revised language on page 2 of Attachment A, which specifies information required in the listing. (See Item No. 8 of this matrix.)
8.	No. 7 Att. A, Page 2, 5 th paragraph	Part I, Pages 65-68	SBE Staff	Revise paragraph: The Assessors' offices must provide to the Board a listing of all properties to which all or a portion of the \$20,000 of tax exempt cap has been applied, and the tax dollar amount applied to each property. Specific instructions from the Board will be forthcoming regarding the frequency, specific information and format of this listing. <u>The Board issued a County Assessors Only letter, (CAO 2001/013), which included a form for assessors to list the properties to which the \$20,000 of tax exemption limitation applies. The form requires the name of the nonprofit corporation owning the property, the corporate identification number of the nonprofit corporation, the assessors' parcel number(s) for the property, the property's address, and the amount of the \$20,000 exemption applied to the property. In addition, documentation is requested that indicates the tax exemption amount applied to each property. The Board will conduct-run a statewide match by corporation name and identification number to verify and ensure that the \$20,000 tax exemption cap has not been exceeded statewide and provide the matching process results to the assessors' offices for any further action, if needed.</u>	Revision necessary due to Board's issuance of direction to assessors in CAO No. 2001/013. (See Item No. 7 of this matrix.)

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9.	No. 7 Att. A, Page 4	Part I, Pages 65-68	Michael Stein	<p>Comment: Deletion of the clause after the semi-colon in the first sentence and the deletion of the second sentence appears to conflict with the specific statutory language, the proposed change should not be made.</p> <p>Revise language under section titled <i>Recorded Deed Restriction Requirement</i>:</p> <p>A recorded deed restriction meeting the requirements of section 214(g)(2)(A)(i), must state that the property's usage is restricted to lower-income housing.; <u>and, that the units designated for use by lower income households are continuously available to or occupied by such households at rents within the prescribed limits. The deed restrictions must indicate that the rents shall not exceed those prescribed by Health and Safety Code section 50053, or in the case of a conflict between the statutorily prescribed rent levels and the terms of government financing, the deed must state that the rents shall not exceed those prescribed by the terms of the financing.</u></p>	<p>Not accepted. It is unnecessary to add lengthy restriction language to the deed. Staff proposes the following modified language which addresses the same concerns:</p> <p><u>...housing, as specified by applicable statutory provisions.</u></p>
10.	No. 7 Att. A, Page 5, 2 nd bullet	None	SBE Staff	<p>Revise sentence:</p> <p>The document should restrict <u>the property, such that the entire property or a minimum of 90% of the occupants (units) a percentage of the property are to use for low income households, housing,</u> utilizing the language in section 214(g)(2)(A)(i). (See Appendices G and H, for examples of "other legal document" and a "Statement by Chief Executive Officer" that would satisfy these requirements.)</p>	<p>Reworded to reflect the statutory change to section 214 (a)(1)(C) enacted by Ch. 601, AB 659, effective September 24, 2000.</p>

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11.	None	Part I, Page 72	SBE Staff	<p>Delete language as shown:</p> <p>Some limited partnership agreements authorize a sharing of management duties and responsibilities between the nonprofit managing general partner and another general partner. An example would be language stating that "the general partners acting unanimously within the authority granted to them shall have full, complete and exclusive discretion to manage and control the business of the partnership....and shall make all the decisions affecting the partnership." and shall manage and control the partnership. Such provisions requiring each general partner to obtain the consent of the other prior to taking any action or making any decision, provide equal authority to each in managing the business of the partnership. As such the nonprofit managing general partner would have sufficient management responsibilities and duties to qualify for exemption as a managing general partner within the meaning of section 214(g).</p>	Language in strike out should be deleted because it is repetitive and unnecessary.

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12.	None	Part I, Page 72	Michael Stein	<p>Comment: Agreements are being written in ways to assign or delegate to the for-profit partner all the management duties of the managing general partner. Propose adding language to clarify non-qualifying provisions.</p> <p>Add the following section after the section <i>Shared Management Authority</i>:</p> <p><u>Nonqualifying Shared Management Authority</u></p> <p><u>Example: Clause providing that management obligations of the general partners are the "several and not joint obligations" of the general partners</u></p> <p><u>Some agreements provide that "any obligations of a General Partner hereunder are the "several and not joint obligations" of the General Partners, except as herein expressly provided to the contrary." The term, "several but not joint" requires each general partner to be individually, but not jointly responsible, for the obligations of the other general partners. This language is ambiguous as to the scope of the management duties covered; particularly since the term, "any" is construed broadly. For example, does it reference only duties authorized to the general partners, since those duties specifically authorized to the managing general partner may be construed as those that fall within the exception of "expressly to the contrary?" The intent of this provision apparently is to ensure that the [for-profit] Co-general partner is separately responsible for all the duties of the [nonprofit] managing general partner, and vice-versa. As such, this provision is disqualifying since it would permit the Co-General Partner to manage the partnership business to the exclusion of the managing general partner, leaving it with no management of the partnership business. Assuming that the limited partnership agreement has provided specific separate management duties to the managing general partner, an example of qualifying language would be: "[e]ach obligation of the general partners under this agreement which is not stated to be only an obligation of the Co-general Partner or the Managing</u></p>	Accepted. The proposed text is consistent with the requirement of section 214(g) that the nonprofit corporation must have management duties to function as the managing general partner.

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				<p><u>General partner, shall be the several and not joint obligation of each general partner."</u> This provision would allow management duties delegated to the general partners to be the obligation of each general partner individually, without requiring the management duties authorized specifically only to the managing general partner to also be the obligation of the other general partners.</p> <p><u>Example: Clause providing that management obligations of the general partners are the "joint and several obligations" of each general partner</u></p> <p>Other agreements provide that, "if there is more than one General Partner, the obligations of the General Partners under the agreement shall be the <i>"joint and several"</i> obligations of each General Partner." By definition, the term, "joint and several" means that the general partners are responsible, together and individually, for the [management] obligations of each general partner.^{FN} This language is disqualifying since it may also be construed to authorize the for-profit general partner(s) to manage the partnership business to the exclusion of the [nonprofit] managing general partner, leaving it with no management of the partnership business.</p> <p><u>Assuming that the partners' intent is that all the general partners are obligated to perform the same management duties, please reference the section above, <i>Shared Management Authority</i>.</u></p> <p>^{FN} Black's Law Dictionary, 7th Edition, (1999) defines "joint and several" as follows: joint and several, adj. (Of liability, responsibility, etc.) apportionable either among two or more parties or to only one or a few select members of the group, at the adversary's discretion; together and in separation.</p>	

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13.	None	Part I, Page 72	Michael Stein	<p>Comment: Agreements are being written in ways to "assign" or "delegate" to the for-profit partner all of the duties of the managing general partner. Language should be added that prohibit delegation clauses that assign all management duties to the for-profit general partner.</p> <p>Add the following example after the 1st example on page 72:</p> <p><u>Example: General Partner Delegations</u></p> <p><u>A provision stating "Each General Partner may from time to time delegate [all] its responsibilities and duties" is unacceptable. It would permit, by a simple act of delegation, the transfer of all duties and responsibilities of the Managing General Partner to the for-profit General Partner. An acceptable provision would be one that required the Managing General Partner to remain fully responsible for any delegated duties or responsibilities.</u></p> <p><u>For example, this language would be acceptable; "Each of the general partners may in the proper and reasonable exercise of their respective management authority, delegate certain of its powers, rights and obligations hereunder, and may appoint, employ, contract or otherwise deal with any person for the transaction of the business of the Partnership, which person may, under supervision of the respective general partner, perform any acts or services for the Partnership as the respective general partner may approve; provided, however, that such delegation shall not excuse the respective general partner from overseeing on an ongoing basis, the activities assigned."</u></p>	Accepted. The proposed language is consistent with the requirement of section 214(g) that the nonprofit corporation, despite reasonable delegation of duties, must retain management responsibility to function as the managing general partner.